

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PAUL VESCOVO

APPELLANT,

v.

**ROBERT D. KINGSLAND, JR. and
DEMPSEY & KINGSLAND, P.C.**

RESPONDENTS,

**CHAD GARDNER AND LAW OFFICE
OF CHAD GARDNER,**

**RESPONDENTS-CROSS CLAIM
RESPONDENTS,**

LINDA JEPSEN,

**RESPONDENT-CROSS CLAIM
APPELLANT**

v.

LAUREN MABERRY

**DEFENDANT-CROSS CLAIM
APPELLANT.**

DOCKET NUMBER WD83324 Consolidated with WD83335 and WD83349

DATE: December 29, 2020

Appeal From:

Jackson County Circuit Court
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Mark D. Pfeiffer, Judge and
Edward R. Ardini, Jr., Judge

Attorneys:

Clayton E. Gillette, Kansas City, MO, for appellant Vescovo.
Stephen B. Millin, Jr., Kansas City, MO, for defendant-cross claim appellant Maberry.

James C. Morrow, Kansas City, MO, for respondents-cross claim respondents Gardner.
Taylor L. Connolly, Overland Park, KS, for respondents Kingsland.
Kimberly S. Humphrey, Gladstone, MO, for respondent-cross claim appellant Jepsen.

MISSOURI APPELLATE COURT OPINION SUMMARY

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PAUL VESCOVO, APPELLANT,

v.

ROBERT D. KINGSLAND, JR. and DEMPSEY & KINGSLAND, RESPONDENTS,

**CHAD GARDNER AND LAW OFFICE OF CHAD GARDNER, RESPONDENTS-
CROSS CLAIM RESPONDENTS,**

LINDA JEPSEN, RESPONDENT-CROSS CLAIM APPELLANT

v.

LAUREN MABERRY, DEFENDANT-CROSS CLAIM APPELLANT.

WD83324 (Consolidated with WD83335 and WD83349)

Jackson County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Mark D. Pfeiffer, Judge, and Edward R. Ardini, Jr., Judge

Paul Vescovo, appeals from the trial court's entry of summary judgment in favor of attorneys Chad Gardner and Robert Kingsland, their respective law offices, and their client, Linda Jepsen, on Vescovo's claims for malicious prosecution and abuse of process related to a section 1983 claim asserted against Vescovo in his individual capacity while he was sheriff of Clay County, Missouri. Vescovo argues that genuine issues of material fact in dispute prevented the trial court from finding that Vescovo could not establish all of the essential elements of his claims.

Jepsen and Lauren Maberry each appeal the trial court's entry of judgment on the pleadings in favor of Gardner on their cross-claims for legal malpractice, and argue that they adequately plead each of the essential elements of their claim.

AFFIRMED.

Division Four holds:

1) Because the multiple claims asserted in the underlying lawsuit against multiple defendants in multiple capacities involved no more than varied theories of liability arising out of common facts in the same proceeding, and because Vescovo has not pled, nor made any effort to demonstrate, the absence of probable cause as to the entire underlying proceeding, the trial court did not err in concluding that Vescovo cannot establish the essential element of the absence of probable cause on his claim of malicious prosecution against Gardner and Kingsland.

2) Even if the trial court focused only on the single claim asserted in the underlying lawsuit against Vescovo in his individual capacity, it would not have been error to conclude that Vescovo cannot establish the essential element of the absence of probable cause on his claim of malicious prosecution where the uncontroverted facts establish that Gardner and Kingsland could have possessed a reasonable belief that the facts alleged supported individual liability.

3) Because it was not error for the trial court to conclude that Vescovo could not, as a matter of law, establish that Gardner and Kingsland lacked probable cause to pursue the underlying lawsuit, it was also not error for the trial court to enter summary judgment in favor of Jepsen on Vescovo's malicious prosecution claim because her affirmative defense of reliance on the advice of counsel is inextricably connected with Vescovo's burden to demonstrate the lack of probable cause.

4) The trial court did not err in entering summary judgment in favor of Gardner and Kingsland on Vescovo's claim of abuse of process because the uncontroverted facts establish that Gardner and Kingsland did not use process in an unwarranted or unauthorized manner in instituting the underlying lawsuit.

5) The trial court did not err in granting Gardner's motion for judgment on the pleadings because, as a matter of law, Jepsen and Maberry cannot establish a claim of legal malpractice against Gardner that depends on an assertion that he lacked probable cause to file the underlying lawsuit, and because the cross-claims failed to allege facts that could support a finding of proximate cause between Gardner's failure to appeal dismissal of the underlying lawsuit and Jepsen and Maberry's alleged damages.

Opinion by: Cynthia L. Martin, Judge

November 29, 2020

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